

Agenda

Item #3



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: November 22, 2010

Re: Staff Recommendation Concerning Michael Dennehy

The Ethics Commission staff recommends the two findings of violation and penalties totaling \$274 against political consultant Michael Dennehy that are discussed in the attached memo. On November 12, 2010, I e-mailed and mailed the attached memo to Michael K. Mahoney, the attorney for Mr. Dennehy. Mr. Mahoney acknowledged receiving the memo by e-mail, and has submitted no written response. I expect Mr. Mahoney to attend the November 30 meeting to answer any questions that you have.

Thank you for your consideration of the staff's recommendations.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

November 12, 2010

By E-Mail and Regular Mail

Michael K. Mahoney, Esq.
Federle Mahoney
100 Water Street
Hallowell, Maine 04347

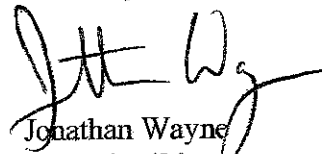
Dear Mr. Mahoney,

Thank you for your assistance in the Ethics Commission's investigation concerning the June 7, 2010 phone calls financed by Michael Dennehy. The matter will be considered by the members of the Ethics Commission at their meeting on November 30, 2010 at 11:00 a.m. at the Commission's office.

As explained in the enclosed memo, the staff recommends two findings of violation and the assessment of penalties totaling \$274. If you would like to submit any response on behalf of Mr. Dennehy, please file it by 12:00 noon on Monday, November 22, 2010. I anticipate mailing a packet of materials to the Commissioners later that day.

Please call me at 287-4179 if you have any questions concerning this request.

Sincerely,


Jonathan Wayne
Executive Director



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: November 12, 2010

Re: Staff Recommendation Concerning Michael Dennehy

On June 7, 2010, the evening before the Republican gubernatorial primary election, about 7,000 Maine households received an automated telephone message asking whether candidate Paul LePage could be trusted on issues of moral values. The calls suggested that he had changed his position on civil unions for same-sex couples. The calls did not include a "disclaimer" statement of the sponsor of the calls. On June 11, 2010, the Commission received a request from Robert D. Stone of Lewiston to investigate who made the calls.

Relevant Law

Disclaimer Requirement

Under 21-A M.R.S.A. § 1014, certain political communications directed to voters by candidates or others are required to contain a statement of who paid for the communication, and whether a candidate authorized the expenditure. In my view, the relevant subsections of § 1014 are:

- Subsection 2-A, which covers all communications naming or depicting a clearly identified candidate distributed in the last 21 days before a primary election and the last 35 days before a general election,
- Subsection 4, which sets forth the enforcement actions the Commission may take for violations of Section 1014, and
- Subsection 5, which covers pre-recorded automated telephone calls.

Requirement to Report Independent Expenditures

Also, communications that name or depict a clearly identified candidate disseminated to voters in the last 21 days before a primary election are presumed to be an independent expenditure, if there is a Maine Clean Election Act candidate in the race. (21-A M.R.S.A. § 1019-B(1)(B)) If more than \$100 is spent to support or oppose a candidate, the spender must file a financial report with the Commission stating the date and purpose of the expenditure and a statement whether the expenditure was in support of, or in opposition to, the candidate.

Factual Circumstances of Calls

Self-Identification and Affidavit by Mr. Dennehy

During the first week of July, I received a call from attorney Michael K. Mahoney, who advised that he had been retained by the person responsible for the calls. Mr. Mahoney said that his client did not intend to violate the Election Law and wished to come forward to avoid the need for an investigation by the Commission. On July 6, I requested that his client respond to some questions in the form of an affidavit. On July 15, 2010, Mr. Mahoney provided an affidavit. The following day (July 16), the Kennebec Journal published a story on the Commission's investigation of this matter.

The affidavit disclosed that the calls were arranged by Michael Dennehy, who is a political consultant based in Concord, New Hampshire. He has a political consulting company, The Dennehy Group, and is a principal of a separate government relations firm. According to the affidavit, he arranged to have Contact Services of Grand Rapids, Michigan, make the calls. The firm's automated calling system completed 7,289 calls to Maine households. The cost was 2.75 cents per call. So, the total cost of the calls was \$200.45. Mr. Dennehy provided an invoice from Contact Services. In the affidavit, Mr. Dennehy claims that "The Dennehy Group was unaware that a 'disclaimer' was required" and "I acted quickly and never considered that a disclaimer would be necessary."

Mr. Dennehy was a paid consultant for Les Otten's 2010 campaign for governor. In the July 15, 2010 affidavit, he states that he made the expenditure without the knowledge or consent of Mr. Otten or any other person associated with the campaign.

The affidavit states that Mr. Otten first learned of Mr. Dennehy's involvement in the calls on July 15, 2010 (the same day as the affidavit was signed).

Regarding the motivation for the calls, Mr. Dennehy states in his July 15 affidavit that he found out on June 7, 2010 that "Paul LePage dropped a last minute mail piece attacking Les Otten." It states that he did some quick research on the internet and developed the script for the phone calls to highlight a vulnerability of Paul LePage. He typed up a script, recorded it, and sent it to a list of Maine voters he had from a previous campaign. The affidavit states that he paid for the calls from his firm's funds.

Further Information and Documents Provided by Mr. Dennehy

Les Otten's campaign finance reports disclose that the Otten campaign paid \$33,122 to Mr. Dennehy for his consulting services, and paid \$30,091 to Contact Services, LLC for automated phone calls. Based on the affidavit alone, the Commission staff was initially skeptical that Mr. Dennehy would arrange for the calls without authorization from the Otten campaign and would pay for the calls from his own pocket. We decided it was necessary to gather more information to test Mr. Dennehy's story.

On July 26, 2010, the Commission staff requested an opportunity to interview Mr. Dennehy and documents in his possession relating to the Otten campaign. In response, he provided a large number of documents.

At an August 16 interview, Mr. Dennehy explained his 20 years of experience with political campaigns. He was the Executive Director of the New Hampshire Republican Party in 1996-1997. Most of his experience has been within New England, but until this year he had not worked on a campaign for state office in Maine. His only campaign experience in Maine was working on John McCain's 2000 and 2008 presidential campaigns. In 1999-2000, he was the northeast political director for Sen. McCain's first presidential campaign.

He began working for the Otten campaign on March 1, 2010 as a general political consultant. He worked on contacts with voters such as direct mail and other campaign literature, newspaper advertising, and automated phone calls. Television and radio advertisements were handled by other members of the campaign.

Mr. Dennehy explained that the Otten campaign took pride in running a positive campaign and never considered doing negative attacks on other candidates. The campaign never discussed Paul LePage's position on civil unions.

He said that, as of June 7, 2010, he did not know that Maine had a disclaimer requirement. He also said that until two or three weeks before the August 16, 2010 interview he had never put a disclaimer in an automated phone call.

Mr. Dennehy said that he had lists of registered Republicans in Maine from the 2000 and 2008 campaigns for John McCain. He used those voter lists for the June 7 calls. He said that the telephone numbers for the calls did not come from the Otten campaign.

Mr. Dennehy described that, on July 15, 2010, he called Les Otten and the campaign manager for the Otten campaign to inform them that he was responsible for the LePage phone calls.

Information and Documents from the Otten Campaign

An attorney for the Otten campaign called me after the July 16, 2010 news story and offered the campaign's cooperation in this investigation. I requested records of the campaign relating to Mr. Dennehy and an opportunity to interview Otten campaign manager Edith Smith, the campaign's manager. The Otten campaign provided a large amount of documents.

Assistant Director Paul Lavin and I interviewed Ms. Smith on August 17, 2010. She was cooperative and professional. Her testimony concerning Mr. Dennehy's role in the campaign was consistent with his explanation.

A good part of the interview was directed at whether the Otten campaign had authorized Mr. Dennehy to arrange the paid calls. Ms. Smith described how the Otten campaign had prided itself in "not going negative," which is consistent with the Commission staff's observations of public communications made by the Otten campaign. The positive approach described by Ms. Smith was also supported by the documents and e-mails we reviewed.

Ms. Smith explained that she learned of Mr. Dennehy's involvement in the calls on July 15 -- one day before the story broke in the Kennebec Journal. That day, Mr.

Dennehy telephoned Les Otten and Edith Smith to explain his responsibility for the calls. Ms. Smith described the candidate's and her reaction, which could be summed up as anger and disbelief. Her account of hearing the news from Mr. Dennehy was consistent with Mr. Dennehy's description. Overall, Ms. Smith was courteous and even-handed toward Mr. Dennehy, but she was convincing that she and the candidate viewed Mr. Dennehy's initiation of the June 7 phone calls as dumbfounding and something of a betrayal.

Ms. Smith stated that she had not heard of any mailing by the LePage campaign that was critical of Les Otten. She stated that, if there had been such a mailing, she would have known about it.

We recognize that because you did not take part in the interview of Ms. Smith, you did not have that opportunity to assess her reliability as a witness. Assistant Director Paul Lavin and I found her to be 100% credible.

Information from LePage Campaign

In September 2010, I asked John Morris, the chief of staff of the LePage campaign, whether the campaign had sent any mail attacking Les Otten. In clear terms, Mr. Morris denied that any such mailing was sent. The Commission staff concludes that this statement in Mr. Dennehy's affidavit is false.

Staff Conclusions

Based on our interviews of Mr. Dennehy and Ms. Smith, and our review of documents and e-mails, the Commission staff is persuaded that the Otten campaign did not authorize Mr. Dennehy to make the June 7 phone calls. Also, we have not obtained any evidence contradicting Mr. Dennehy's sworn statement that his firm paid for the calls.

We find most of Mr. Dennehy's account to be believable, except for two aspects. First, we are unpersuaded that, as of June 7, 2010, he had no knowledge of the disclaimer requirement. He may not have known to a certainty that Maine law required a disclaimer, but – if he didn't know – he should have checked. New Hampshire election law specifically requires a disclaimer for pre-recorded audio messages by a political

candidate. Mr. Dennehy simply has too much experience as a political consultant not to have considered the disclaimer requirement. Also, in the course of our August 16, 2010 interview of Mr. Dennehy, we presented him with an e-mail dated March 26, 2010 that he sent to Les Otten instructing him on how to record an automated telephone message concerning "ObamaCare." In the e-mail, Mr. Dennehy directed the candidate to dial a telephone number, enter a client identification number, and instructed: "Then record your message – don't forget to do disclaimer." If Mr. Dennehy knew of the disclaimer requirement in March 2010, then he knew about it on June 7.

Secondly, Mr. Dennehy's statement in section 11 of his affidavit concerning a negative attack mailer by Paul LePage appears to be false.

Although we are troubled by these discrepancies (particularly the apparent inclusion of false information in an affidavit), we find the key points of Mr. Dennehy's account to be believable: (1) he paid for the calls himself, and (2) he acted without authorization of the Otten campaign.

Staff Recommendation

The staff recommends that you:

- (1) find Mr. Dennehy in violation of 21-A M.R.S.A. §§ 1014(2-A) and (5) for not including the required disclaimer in the phone calls, and assess a penalty of \$200 for the violation; and
- (2) find Mr. Dennehy in violation of 21-A M.R.S.A. § 1019-B(3) for not filing an independent expenditure report, and assess a penalty of \$74 for the violation.

Missing Disclaimer

The automated phone calls arranged by Mr. Dennehy violated 21-A M.R.S.A. §§ 1014(2-A) and (5). Under Subsection (5), the automated message was required to identify the name of the person who made or financed the expenditure for the calls. Under subsection 2-A, the calls were also required to state whether they were authorized by any candidate. The staff recommends that you assess a \$200 penalty against Mr. Dennehy for the violation.

Independent Expenditure Report

Because the calls name a clearly identified candidate in the Republican gubernatorial primary election and were disseminated to voters one day before the election, the presumption in 21-A M.R.S.A. § 1019-B(1)(B) applies. Because Mr. Dennehy spent more than \$100 on the expenditure, he was required to file an independent expenditure with the Commission on June 8, 2010. (Under Chapter 1, Section 10(3)(B), all independent expenditures over \$100 per candidate made during the last 13 days before an election must be reported within 24 hours of the expenditure.) The Commission staff recommends that you treat July 15, 2010 (the filing of the affidavit) as the filed date for the report, and that the report be considered 37 days late.

Applying the formula in 21-A M.R.S.A. § 1020-A(4-A), the preliminary penalty for the late report is \$2.00 per day (1% of the amount of expenditures in the report, which was \$200.45). If the report is considered to be 37 days late, the preliminary penalty would be \$74. The Commission staff recommends assessing a penalty in this amount for the late filing of an independent expenditure report. While Mr. Dennehy could ask for a waiver of the preliminary penalty under § 1020-A(2), the Commission staff recommends declining to grant any waiver.

The total penalty recommended by the Commission staff is \$274. We would prefer to recommend a higher penalty, because \$274 is inconsistent with the seriousness of the violation. Nevertheless, this appears to be the largest penalty supported by the Election Law. We do not believe the automated message contained any misrepresentation of the sponsor of the calls. The Commission staff may recommend that you consider proposing a statutory change for the 2011 legislative session authorizing the Commission to assess a greater penalty when a "paid for" disclaimer is omitted from a large-scale communication.

Thank you for your consideration of this memorandum. If you believe any further investigation is necessary, the Commission staff would be pleased to take any action you would like.

FEDERLE | MAHONEY

LAW & GOVERNMENT AFFAIRS

VIA ELECTRONIC MAIL

Jonathan.Wayne@maine.gov

July 15, 2010

Jonathan Wayne, Executive Director
Commission on Governmental Ethics
135 State House Station
Augusta, ME 04333-0135

Dear Director Wayne:

Enclosed please find information responsive to your Request for Information dated July 6, 2010. Should you have any questions, please feel free to contact me.

I look forward to working with you on this matter going forward.

Sincerely,



MICHAEL K. MAHONEY
MKM/kcm
Enclosures

**AFFIDAVIT OF
MICHAEL P. DENNEHY**

I, MICHAEL P. DENNEHY, under oath do hereby state the following facts which are made upon my own personal knowledge with regard to a request for information from the Commission on Governmental Ethics:

[Commission Request #1: an identification of the client]

1. The Dennehy Group, 6 Hills Avenue, Suite B, Concord, NH 03301

[Commission Request #2: the firm that made the calls for the client ("the vendor")]

2. Contact Services, LLC, 2275 Burlingame SW, Grand Rapids, MI 49509

[Commission Request #3: the total cost of the calls]

3. The total cost was \$200.45. See attached invoice.

[Commission Request #4: the purpose of the client in arranging for the calls]

4. To highlight inconsistencies in the position of Republican gubernatorial candidate Paul LePage with respect to "civil unions."

[Commission Request #5: a statement whether the client made the expenditure in consultation with any 2010 Maine state candidate, the candidate's political committee, or their agents]

5. The Dennehy Group arranged these calls on its own, without the knowledge or authorization of any candidate, candidate's political committee or their agents. During the 2010 gubernatorial primary season, the Dennehy Group was a paid consultant of the Otten for Governor campaign. The expenditure at issue, however, was made without the knowledge or consent of Mr. Otten or any other person associated with this campaign. Mr. Otten's campaign was first informed of The Dennehy Group's involvement in the expenditure at issue on July 15, 2010.

[Commission Request #6: a statement whether the client received any money for the purpose of financing the calls]

6. The Dennehy Group paid for the full cost of this expenditure and received no compensation for arranging it.

[Commission Request #7: the text of the message in the calls]

7. "Does Paul LePage have any real convictions? You be the judge. On Civil unions, the Augusta Insider Dot US reported that Paul LePage said he would not support civil unions for gay and lesbian couples. But, LePage's stance on Civil Unions, as reported at As Maine Goes Dot Com, LePage says a "civil contract between unmarried couples, gay or heterosexual, is an acceptable arrangement and a private concern." If we can't trust Paul LePage on Moral Values, how can we trust him to run the State of Maine?"

[Commission Request #8: a description of the universe of households which were intended to receive the calls]

8. A list of Maine registered Republican voters totaling 9,937 households.

[Commission Request #9: the number of calls attempted by the vendor, and the number of calls that the vendor successfully made]

9. 9,937 households attempted; 7,289 households connected.

[Commission Request #10: an explanation (1) why the calls did not contain a statement of who made the expenditure, and (2) why the client did not file an independent expenditure report]

10. At the time the expenditure was made, The Dennehy Group was unaware that a "disclaimer" was required, nor did it know that an independent expenditure report was required. The Dennehy Group first became aware that its expenditure potentially violated Maine law after seeing newspaper articles recounting the Commission's discussion of the expenditure at its June 24, 2010 meeting.

[Commission Request: Other Relevant Information]

11. On the afternoon of June 7, I caught wind that Paul LePage dropped a last minute mail piece attacking Les Otten. Until that point, Mayor LePage was one of the only candidates who had not attacked Les Otten. As a result, I felt I had to act quickly, without the knowledge of the candidate or the campaign, to highlight a vulnerability of Mayor LePage's. I did some quick research on the internet and found the civil union discrepancies on the Augusta Insider website and on the As Maine Goes website. I then typed up a script, recorded it, and sent it out to a list that I had compiled from a previous campaign. I acted quickly and never considered that a disclaimer would be necessary. Given that the call was not authorized by the campaign, I paid for it out of my company's funds. I didn't think about the call again until I read an article on the internet about the Ethics Commission investigating a phone call from the night before the election that criticized Paul LePage on civil unions. At that point, I knew that those were the

calls I had placed and began a search for an attorney to come to help me approach the Ethics Commission and take full responsibility.

Dated: July 15, 2010



MICHAEL P. D'AMICO

STATE OF NH
COUNTY OF Merrimack

July 15, 2010

Then personally appeared the above-named MICHAEL P. D'AMICO and acknowledged the foregoing instrument to be his free act and deed.

Before me,


Notary Public/Attorney at Law
Printed Name:
Commission Expires:

NOTARY PUBLIC STATE OF NEW HAMPSHIRE
Commission Expires December 31, 2011

Contact Services, LLC

2275 Burlingame SW
Grand Rapids, MI 49509
616-452-3195

Invoice

Number 5253

Date: June 07, 2010

Bill To:

Michael Dennehy
The Dennehy Group
6 Hills AVE. STE B
Concord, NH 03301 USA

Ship To:

Michael Dennehy
The Dennehy Group
6 Hills AVE. STE B
Concord, NH 03301 USA

PO Number	Terms	Customer #	Service Rep.	Project
				AutoCall

Description	Quantity/Hours	Price/Rate	Amount
S/T LePage	7,289.00	0.0275	200.45

Total \$200.45

0 - 30 days	31 - 60 days	61 - 90 days	> 90 days	Total
\$200.45	\$0.00	\$0.00	\$0.00	\$200.45

Payments by Otten Campaign to Contact Services LLC and The Dennehy Group

Date	Payee	Type of Expenditure	Remark	Amount
5/14/2010	Contact Services LLC	Phone banks, automated telephone calls		\$3,547.36
5/14/2010	Contact Services LLC	Phone banks, automated telephone calls		\$720.34
5/15/2010	Contact Services LLC	Phone banks, automated telephone calls		\$4,037.44
6/4/2010	Contact Services LLC	Phone banks, automated telephone calls		\$480.92
6/5/2010	Contact Services LLC	Phone banks, automated telephone calls		\$3,776.61
6/28/2010	Contact Services LLC	Phone banks, automated telephone calls		\$17,528.50
			Total	\$30,091.17
4/14/2010	The Dennehy Group	Campaign consultants	campaign consultants	\$10,000.00
4/14/2010	The Dennehy Group	Campaign consultants	campaign consultants	\$10,000.00
4/14/2010	The Dennehy Group	Travel (fuel, mileage, lodging, etc.)	fuel	\$144.41
4/14/2010	The Dennehy Group	Travel (fuel, mileage, lodging, etc.)	fuel	\$138.11
4/14/2010	The Dennehy Group	Travel (fuel, mileage, lodging, etc.)	parking	\$21.00
5/15/2010	The Dennehy Group	Campaign consultants	Campaign Consultants	\$10,000.00
5/15/2010	The Dennehy Group	Travel (fuel, mileage, lodging, etc.)	Reimburse for fuel	\$152.72
7/2/2010	The Dennehy Group	Campaign consultants	campaign consultants	\$2,666.64
			Total	\$33,122.88

3

From: les otten
To: Michael P. Dennehy
Subject: Re: Robocall script
Date: Friday, March 26, 2010 12:48:07 PM

At lunch will call it in 30 minutes


-----Original Message-----

From: Michael P. Dennehy
To: Les Otten
To: Edith Smith
To: Will Gardiner
Subject: Robocall script
Sent: Mar 26, 2010 12:36 PM

Les - Follow these instructions:

Call 800- [REDACTED]

Enter my ClientID [REDACTED] then press #

Then record your message - don't forget to do disclaimer 

Les:

ObamaCare needs to be repealed NOW. I'm Les Otten, Republican candidate for Governor. President Obama's government takeover of our health care system is bad medicine for Maine. Join our fight to repeal ObamaCare, go to LesOtten.com and sign our petition. If you're tired of the reckless spending in Washington and Augusta, I hope you'll join our campaign to create jobs in Maine.

 Paid for by Les Otten for Governor. LesOtten.com

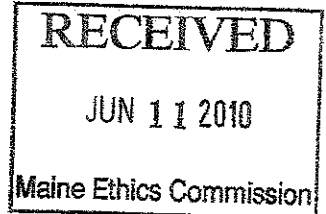
We only have 20-25 seconds and I wanted to mirror the radio ad and press release.

Let me know when you're done.

Thank you!

Dennehy & Bouley
6 Hills Ave., Ste B
Concord, NH 03301
603-228-1601
www.DennehyBouley.com

**Robert D. Stone
12 Harrison Circle
Auburn, ME 04210**



Mr. Jonathan Wayne
Maine Commission on Governmental Ethics
135 State House Station
Augusta, ME 04333

Dear Mr. Wayne:

This letter is a follow up to our email and phone contacts on June 8, 2010.

I have prepared this letter to file a formal complaint with the Maine Commission on Governmental Ethics regarding an automated phone call I answered at my residence on the evening of June 7, 2010 at 8:01 PM.

The call came in and displayed a telephone number of 802 458-0617. An automated message played and clearly advocated the defeat of Mr. Paul LePage. The call ended and there was no disclosure of who paid for and/or authorized the call.

I was not able to record the call.

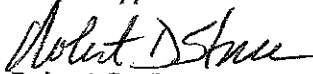
I immediately called the number on caller ID. I accessed a voice mail system which asked that I leave a message. I identified myself, provided my phone number and asked that they call back. I have not received a return phone call.

I am aware of numerous citizens across Maine who reported the same call with no disclosure.

I would be pleased to answer any additional questions. I can be reached (days) at 784-9164 and evenings at 784-1099.

Please keep me advised of any progress and I will keep this and other communications confidential.

Sincerely,


Robert D. Stone